

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY WAYNE FAILS,

Defendant-Appellant.

UNPUBLISHED

May 29, 2001

No. 229056

Genesee Circuit Court

LC No. 99-004631-FH

Before: Neff, P.J., and Fitzgerald and Markey, JJ.

MEMORANDUM.

Pursuant to a plea agreement, defendant pleaded guilty to a reduced charge of assault with intent to commit sexual conduct involving sexual penetration, MCL 750.520g(1); MSA 28.788(7)(1), in the sexual assault of his daughter. Defendant was sentenced to a term of 17 to 120 months' imprisonment. Defendant appeals by leave granted. We affirm.

First, defendant argues that the trial court's original sentence, which did not indicate that it was a departure, was invalid because the trial court did not either sentence defendant to an intermediate sanction or state its reasons for departure on the record. MCL 769.34(4)(a); MSA 28.1097(3.4)(4)(a). Defendant asserted below and on appeal that the trial court had not intended to depart from the statutory guidelines. When defendant raised this issue below, the trial court maintained that defendant had received the appropriate sentence. The trial court clearly articulated its reasons for the departure on the record at that time.

Although a trial court may not generally modify a valid sentence, it is permitted to correct error in an otherwise valid sentence. *People v Thomas*, 447 Mich 390, 393-394; 523 NW2d 215 (1994); MCR 6.429(A). Here, the trial court properly corrected the error in defendant's otherwise valid sentence and resentencing was neither permitted nor required. *People v Miles*, 454 Mich 90, 96; 559 NW2d 299 (1997).

Defendant does not challenge the trial court's reasons for departure, which we find objective and verifiable. *People v Babcock*, 244 Mich App 64, 72, 78; 624 NW2d 479 (2000). The trial court did not abuse its discretion in concluding that its stated reasons constituted substantial and compelling reasons for departure in this case, *id.*, and we find no basis for resentencing. We therefore need not address defendant's claim that resentencing must occur before a different judge.

Defendant also argues that the factual basis for his guilty plea was inadequate. We disagree. “A factual basis to support a plea exists if an inculpatory inference can be drawn from what the defendant has admitted.” *People v Jones*, 190 Mich App 509, 511; 476 NW2d 646 (1991). Even if a defendant denies an element of the crime, a factual basis can be predicated on inculpatory inferences from what the defendant says. *Id.* at 512. Here, defendant admitted to lying in his bed with his young daughter and touching the skin of her “privates [sic] place.” Defendant agreed that the touching was done for “pleasure reasons,” and that the child’s “privates place” was her vagina. The inculpatory inferences that can be drawn from defendant’s admission present an adequate factual basis for the crime.

We affirm.

/s/ Janet T. Neff
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey